

PAULA T. DOW  
ATTORNEY GENERAL OF NEW JERSEY  
Division of Law  
124 Halsey Street - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101  
Attorney for New Jersey Division of Consumer Affairs

**FILED**

DEC 02 2010

**Division of Consumer Affairs**

By: Sabina P. McKinney  
Deputy Attorney General  
(973) 648-4584

STATE OF NEW JERSEY  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS

In the Matter of

Administrative Action

ITALARG, L.L.C.,

**CONSENT ORDER**

Respondent.

WHEREAS this matter having been opened by the New Jersey Division of Consumer Affairs, Office of Consumer Protection ("Division"), as an investigation to ascertain whether violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. ("CFA"), the Contractors' Registration Act, N.J.S.A. 56:8-136 et seq., and the Regulations Governing Home Improvement Contractor Registration, N.J.A.C. 13:45A-17.1 et seq. ("Contractor Registration Regulations"), as well as its owners, officers, directors, managers, agents, servants, employees, representatives, independent contractors, subsidiaries, successors and assigns (collectively, "Respondent"), (hereinafter referred to as the "Investigation");

WHEREAS Respondent, with a main business address of 34 Leonard Place, Passaic, New Jersey 07055, is engaged in the business of Advertising, offering for Sale and selling Home Improvements;

WHEREAS the Division alleged that Respondent failed to register in the State as a Contractor;

WHEREAS the Division alleged that Respondent advertised Home Improvement services while unregistered in the State as a Contractor;

WHEREAS Respondent denies that it has committed any violation of the CFA, the Contractors' Registration Act and/or the Contractor Registration Regulations;

WHEREAS the Division and Respondent (collectively, the "Parties") having reached an amicable agreement resolving the issues in controversy and concluding this matter without the need for further action, and Respondent having voluntarily cooperated and consented to the entry of the within order ("Consent Order") without having admitted violation of law or finding of fact, and for good cause shown:

**IT IS ORDERED and AGREED** as follows:

**1. EFFECTIVE DATE**

1.1 This Consent Order is effective on the date that it is filed with the Division ("Effective Date").

**2. DEFINITIONS**

As used in this Consent Order, the following words or terms shall have the following meanings, which meanings shall apply wherever the words and terms appear in this Consent Order:

2.1 “Advertise,” “Advertisement” or “Advertising” shall mean any written, oral or electronic statement, illustration or depiction that is designed to create interest in the purchase of, impart information about the attributes of, publicize the availability of, or effect the sale or use of, goods or services, whether the statement appears in a brochure, newspaper, magazine, free-standing inset, bill board, circular, mailer, package insert, package label, product instructions, electronic mail, website, homepage, television, cable television, radio, commercial or any other medium. For the purpose of the Contractor Registration Regulations, “Advertise” shall be defined in accordance with N.J.A.C. 13:45A-17.2.

2.2 “Attorney General” shall refer to the Attorney General of the State of New Jersey and the Office of the Attorney General of the State of New Jersey.

2.3 “Consumer” shall refer to any Person, who is offered Merchandise, defined in accordance with N.J.S.A. 56:8-1(d), for Sale.

2.4 “Contractor” shall be defined in accordance with N.J.S.A. 56:8-137.

2.5 “Home Improvement” shall be defined in accordance with N.J.S.A. 56:8-137 and/or N.J.A.C. 13:45A-17.2.

2.6 “Person[s]” shall be defined in accordance with N.J.S.A. 56:8-1(d).

2.7 “Sale” shall be defined in accordance with N.J.S.A. 56:8-1(e).

2.8 “State” shall refer to the State of New Jersey.

### **3. INJUNCTIVE RELIEF AND BUSINESS PRACTICES**

3.1 Respondent shall not engage in any unfair or deceptive acts or practices in the conduct of its business in the State and shall comply with all applicable State and/or Federal laws, rules and

regulations as now constituted or as may hereafter be amended including, but not limited to, the CFA, the Contractors' Registration Act and/or the Contractor Registration Regulations.

3.2 Respondent shall not Advertise, offer for Sale, sell or perform any Home Improvement, unless and until Respondent is registered as a Contractor with the Division, in accordance with N.J.S.A. 56:8-138, N.J.S.A. 56:8-139, and N.J.A.C. 13:45A-17.3.

#### **4. SETTLEMENT PAYMENT**

4.1 On or before the Effective Date, Respondent shall make a payment of One Thousand and 00/100 Dollars (\$1,000.00) ("Settlement Payment").

4.2 The Settlement Payment consists of a civil penalty, pursuant to N.J.S.A. 56:8-13.

4.3 Respondent shall make the Settlement Payment by certified check, attorney trust account check, or other guaranteed funds made payable to the "New Jersey Division of Consumer Affairs" and forwarded to the undersigned:

Sabina McKinney, Deputy Attorney General  
State of New Jersey  
Office of the Attorney General  
Department of Law and Public Safety  
Division of Law  
Consumer Fraud Prosecution Section  
124 Halsey Street - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101

4.4 Upon making the Settlement Payment, Respondent shall immediately be fully divested of any interest in, or ownership of, the moneys paid. All interest in the moneys, and any subsequent interest or income derived therefrom, shall inure entirely to the benefit of the Division pursuant to the terms herein.

## **5. GENERAL PROVISIONS**

5.1 This Consent Order is entered into by the Parties as their own free and voluntary act and with full knowledge and understanding of the obligations and duties imposed by this Consent Order.

5.2 This Consent Order shall be governed by, and construed and enforced in accordance with, the laws of the State.

5.3 The Parties have negotiated, jointly drafted and fully reviewed the terms of this Consent Order and the rule that uncertainty or ambiguity is to be construed against the drafter shall not apply to the construction or interpretation of this Consent Order.

5.4 This Consent Order contains the entire agreement among the Parties. Except as otherwise provided herein, this Consent Order shall be modified only by a written instrument signed by or on behalf of the Parties.

5.5 Except as otherwise explicitly provided in this Consent Order, nothing herein shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State.

5.6 If any portion of this Consent Order is held invalid or unenforceable by operation of law, the remaining terms of this Consent Order shall not be affected.

5.7 This Consent Order shall be binding upon Respondent as well as its owners, officers, directors, managers, agents, servants, employees, representatives, subsidiaries, successors and assigns, and any entity or device through which it may now or hereafter act, as well as any Persons who have authority to control or who, in fact, control and direct its business.

5.8 This Consent Order shall be binding upon the Parties and their successors in interest. In no event shall assignment of any right, power or authority under this Consent Order avoid compliance with this Consent Order.

5.9 This Consent Order is entered into by the Parties for settlement purposes only. Neither the fact of, nor any provision contained in this Consent Order shall be construed as: (a) an approval, sanction or authorization by the Division or any other governmental unit of the State of any act or practice of Respondent; or (b) an admission by Respondent that any of its acts or practices described in or prohibited by this Consent Order are unfair or deceptive or violate the CFA, the Contractors' Registration Act and/or the Contractors' Registration Regulations. Neither the existence of, nor the terms of this Consent Order shall be deemed to constitute evidence or precedent of any kind except in: (a) an action or proceeding by one of the Parties to enforce, rescind or otherwise implement any or all of the terms herein; or (b) an action or proceeding involving a Released Claim (as defined in Section 6) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

5.10 The Parties represent and warrant that their signatories to this Consent Order have authority to act for and bind the respective Parties.

5.11 This Consent Order is a public document subject to the New Jersey Open Public Records Act.

5.12 This Consent Order constitutes a final agency action and shall be effective upon filing.

5.13 Unless otherwise prohibited by law, any signatures by the Parties required for filing of this Consent Order may be executed in counterparts, each of which shall be deemed an original, but all of which shall together be one and the same Consent Order.

## **6. RELEASE**

6.1 In consideration of the injunctive relief, payments, undertakings, mutual promises and obligations provided for in this Consent Order and conditioned on Respondent making the Settlement Payment referenced in Section 4, the Division hereby agrees to release Respondent from any and all civil claims or Consumer related administrative claims, to the extent permitted by State law, which the Division could have brought against Respondent for violations of the CFA, the Contractors' Registration Act and/or the Contractors' Registration Regulations, prior to the Effective Date for matters arising out of the Investigation as well as the matters specifically addressed in this Consent Order (the "Released Claims").

6.2 Notwithstanding any term of this Consent Order, the following do not comprise Released Claims: (a) private rights of action; (b) actions to enforce this Consent Order; and (c) any claims against Respondent by any other agency or subdivision of the State.

## **7. PENALTIES FOR FAILURE TO COMPLY**

7.1 The Attorney General (or designated representative) shall have the authority to enforce the injunctive provisions of this Consent Order or to seek sanctions for violations hereof or both.

7.2 The Parties agree that any future violations of the injunctive provisions of this Consent Order, the CFA, the Contractors' Registration Act, and/or the Contractors' Registration

Regulations, shall constitute a second or succeeding violation under N.J.S.A. 56:8-13 and that Respondent may be liable for enhanced civil penalties.

#### **8. COMPLIANCE WITH ALL LAWS**

- 8.1 Except as provided in this Consent Order, no provision herein shall be construed as:
- a. Relieving Respondent of its obligation to comply with all State and Federal laws, regulations or rules, as now constituted or as may hereafter be amended, or as granting permission to engage in any acts or practices prohibited by any such laws, regulations or rules; or
  - b. Limiting or expanding any right the Division may otherwise have to obtain information, documents or testimony from Respondent pursuant to any State or Federal law, regulation or rule, as now constituted or as may hereafter be amended, or limiting or expanding any right Respondent may otherwise have pursuant to any State or Federal law, regulation or rule, to oppose any process employed by the Division to obtain such information, documents or testimony.

#### **9. NOTICES UNDER THIS CONSENT ORDER**

9.1 Except as otherwise provided herein, any notices or other documents required to be sent to the Division or Respondent pursuant to this Consent Order shall be sent by United States mail, Certified Mail Return Receipt Requested, or other nationally recognized courier service that provides for tracking services and identification of the Person signing for the documents. The notices and/or documents shall be sent to the following addresses:

For the Division:

Bureau Chief, Office of Consumer Protection  
Division of Consumer Affairs  
State of New Jersey  
Office of the Attorney General  
Department of Law and Public Safety  
124 Halsey Street - 7<sup>TH</sup> Floor  
P.O. Box 45028  
Newark, New Jersey 07101



For the Respondent:

Richard H. Kotkin, Esq.  
170 Pine Street.  
Montclair, New Jersey 07042

IT IS ON THE 2<sup>nd</sup> DAY OF December, 2010 SO ORDERED.

PAULA T. DOW  
ATTORNEY GENERAL OF NEW JERSEY

By: 

THOMAS R. CALCAGNI, ACTING DIRECTOR  
DIVISION OF CONSUMER AFFAIRS

**THE PARTIES CONSENT TO THE FORM, CONTENT AND ENTRY OF THIS  
CONSENT ORDER ON THE DATES UNDER THEIR RESPECTIVE SIGNATURES.**

FOR THE DIVISION

PAULA T. DOW  
ATTORNEY GENERAL OF NEW JERSEY

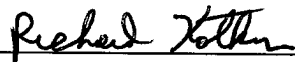
By: 

Sabina P. McKinney  
Deputy Attorney General  
Consumer Fraud Prosecution Section  
124 Halsey Street - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101  
Telephone: (973) 648-4584

Dated: 11/22, 2010

FOR THE RESPONDENT:

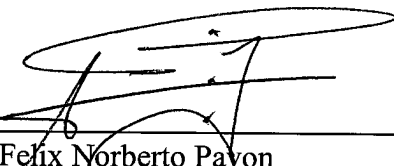
RICHARD H. KOTKIN, ESQ.

By:   
Richard H. Kotkin, Esq.  
170 Pine Street  
Montclair, New Jersey 07042

Dated: October 27, 2010

FOR THE RESPONDENT:

ITALARG, L.L.C.

By:   
Felix Norberto Pavon  
Italarg, L.L.C.  
34 Leonard Place  
Passaic, New Jersey 07055

Dated: 10-27-2010, 2010